IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. [illegible]

DISTRICT OF COLUMBIA,

Petitioner,

vs.

PAUL M. DeHART,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

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CENTRAL DUPLICATING DIVISION—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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PETITION

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the District of Columbia, respectfully shows and represents unto Your Honors that:

STATEMENT OF MATTER INVOLVED

The District of Columbia Income Tax Act imposes a tax upon the income of individuals domiciled in the District of Columbia on the last day of the taxable year. The respondent paid to the District of Columbia an income tax for the cal-

endar year 1939. At the time of payment of such tax respondent filed with the Assessor, D. C., a claim for refund of the amount paid, in which claim it was alleged that the respondent was domiciled in Harrisburg, Pennsylvania, on December 31, 1939. On July 22, 1940, the Assessor disallowed the claim and sent the respondent, by registered mail, a notice of such disallowance. On August 28, 1940, the respondent appealed from the action of the Assessor to the Board of Tax Appeals for the District of Columbia (R. 1-2). On October 9, 1940, the Board of Tax Appeals held that the respondent was not domiciled in the District on the taxable date involved, that the tax was erroneously collected by the District, and the respondent was entitled to a refund thereof (R. 12).

The District petitioned the United States Court of Appeals for the District of Columbia for a review of the decision of the Board of Tax Appeals. On March 24, 1941, the Court of Appeals affirmed the decision of the Board of Tax Appeals (R. 20-24).

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941. The jurisdiction of this Court to issue the writ applied for is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the domicile of a federal employee is to be determined upon different principles of law than those applicable to the determination of domicile of an individual engaged in private employment;

2. Whether there is a presumption requiring strong evidence to overcome it that an employee of the Federal Government residing in the District of Columbia is domiciled in the state where he formerly resided;

3. Whether the domicile of a federal employee residing in the District of Columbia is to be determined upon different principles of law than those used in determining the domicile of such an employee residing in one of the states;

4. Whether respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The United States Court of Appeals for the District of Columbia in this case has decided a question of general importance which has not been, but should be, settled by this Court.

(a) The question is of great importance to the District of Columbia for the reason that the District of Columbia Income Tax Act levies a tax upon the income of individuals "domiciled" in the District, and, because the District of Columbia Estate Tax Law imposes a tax upon the transfer of the estate of every individual who shall die a resident of the District.

(b) The question is of great importance to all employees of the Federal Government residing in the District and to other government employees residing in a jurisdiction other than the state or territory of original domicile. In such cases, the importance of the question is not limited to liability for payment of taxes but extends to matters relating to the administration of estates, the granting of divorces, and the like.

(c) The question is of great importance to persons who have come from the various states and are residing in the District and engaged in private employment.

2. The Court of Appeals has not given proper effect to applicable decisions of this Court.

WHEREFORE, Your petitioner prays the allowance of a Writ of Certiorari to the United States Court of Appeals for the District of Columbia in this cause, and entitled *District of Columbia, Petitioner* v. *Paul M. DeHart, Respondent*, No. 7779,

that said cause may be reviewed and determined by th
Court, and that the judgment of the said Court of Appea
may be reversed and set aside; and for such further reli
and remedy in the premises as this Court may deem meet an
proper.

DISTRICT OF COLUMBIA,
Petitioner.

By:
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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

OPINIONS BELOW

The opinion of the Board of Tax Appeals for the District of Columbia (R. 4-12) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 20-24) is not yet reported.

JURISDICTION

The grounds upon which the jurisdiction of this Court is invoked are stated in the petition.

STATEMENT OF THE CASE

Pursuant to the provisions of the District of Columbia Income Tax Act imposing taxes upon the income of individuals domiciled in the District on the last day of the taxable year, respondent reported his income for the calendar year 1939 and paid the tax computed thereon. Simultaneously with such payment, the respondent filed a claim for refund of the amount paid, alleging that he was not domiciled in the District on the taxable date. On July 22, 1940, the Assessor, D. C., notified respondent of the disallowance of his claim. On August 28, 1940, the respondent, acting in accordance with the provisions of Section 34 of the District of Columbia Income Tax Act (Sec. 980gg., Title 20, D. C. Code, 1929, Supplement V), appealed from the action of the Assessor to the Board of Tax Appeals for the District of Columbia.

In 1914 the respondent took a year's leave of absence from his work in a railroad office and accepted a clerical position in

the Patent Office in Washington under Civil Service. Respondent did not return to the railroad office at the end of the year but continued in the Civil Service up to and including the present time. He is now chief clerk of the Personnel and Organization Division of the National Guard Bureau, War Department, with offices in Washington (R. 4, 5).

When respondent came to Washington in 1914 he was a single person. In 1917 he was married to a native of Washington. No children resulted from such union. Shortly after the marriage, the couple purchased as a home premises 1426 Massachusetts Avenue, S. E., in Washington, wherein they both resided as long as the wife lived and in which the respondent has since resided. When first purchased, the home was encumbered by a mortgage which the respondent subsequently paid off (R. 5).

Respondent's wife died in 1935. While she was living, the respondent purchased an unencumbered lot at Selby-on-the-Bay, in nearby Maryland, and an unencumbered lot in Hillcrest, a subdivision in the District of Columbia. Respondent and his wife had an agreement that a new home would be built on the Hillcrest lot in southeast Washington and a summer residence would be built at Selby-on-the-Bay, and, after his retirement from Government service, six months of the year would be spent at their home in the District and six months at their summer home on the Bay (R. 5, 6).

Respondent has checking or savings accounts in three District banking institutions and owns first trust notes on property located in Maryland and Virginia (R. 7).

Respondent has been an active member of the Keller Memorial Lutheran Church of Washington, D. C., since 1915. He is also a member of the Washington units of the Tall Cedars of Lebanon and the Mystic Shrine, both Masonic bodies, as well as the Motor Club of Washington. Prior to his wife's death, the respondent was a member of the Pennsylvania Society of Washington. During the calendar year 1939

He made substantial contributions to religious and charitable institutions in the District (R. 7).

Respondent was born in Pennsylvania where he resided until he came to the District in 1914. Respondent's parents reside at 1933 North Fourth Street, Harrisburg, Pennsylvania, at which premises he retains a room and claims "legal residence". Respondent pays no rent for such room but he does make monetary gifts to his parents from time to time (R. 7, 8).

Respondent has paid poll taxes in Pennsylvania and voted regularly there since he became of age. While he resided in Harrisburg, he was a member of a church and of Masonic lodges there. While on visits to Harrisburg, he attends and makes contributions to the Pine Street Presbyterian Church (R. 8).

The Board of Tax Appeals found as a fact that the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that such intention remained with him at least until the death of his wife in 1935 (R. 9). The Board, however, held that under the decision of the Court of Appeals in *Sweeney* v. *District of Columbia* [1], the respondent was not domiciled in the District of Columbia on December 31, 1939 (R. 9-12).

The Court of Appeals sustained the Board's finding that the respondent had an intention to remain and make his home in the District and affirmed the Board's decision that he was, nevertheless, domiciled without the District.

SPECIFICATION OF ERRORS

The United States Court of Appeals for the District of Columbia erred:

I. In holding that the respondent was not domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

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[1] ____ App. D. C. ____, 113 F. (2d) 25, cert. den. 310 U. S. 631.

II. In holding that the domicile of an individual employed by the Government is to be determined upon different principles of law than those applicable to the determination of the domicile of an individual engaged in private employment.

III. In holding that there is a presumption, requiring strong evidence to overcome it, that an individual who comes to the District from one of the states and resides here for many years while employed permanently or indefinitely by the United States Government retains his domicile for all purposes in the state from which he comes.

IV. In holding that an individual who has physically removed to the District and has an intention to remain and make his home here indefinitely nevertheless retains his domicile for all purposes in the state where he formerly resided because of his employment by the Federal Government.

STATUTES INVOLVED

Section 2 (a) of the District of Columbia Income Tax Act (Sec. 980a., Title 20, D. C. Code, 1929, Supplement V) provides as follows:

> "TAX ON INDIVIDUALS.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"

* * * *

SUMMARY OF ARGUMENT

Conjunction of physical presence and animus manendi in the new location establishes a change of domicile.

There is no question concerning the respondent's physical presence in the District of Columbia.

The question of intention to remain in the District is one of pure fact. The Board of Tax Appeals found as a fact that

the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time. The Court of Appeals sustained the Board's finding. Domicile in the District follows as a matter of law.

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment.

A person is presumed to be domiciled at the place where he lives.

Even if the test laid down by the Court of Appeals in the Sweeney case [2] were applicable, the evidence clearly shows that respondent here was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

ARGUMENT

I

Respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

In 1914, the respondent came to reside in the District of Columbia. Since that time he has had no home or dwelling place except the one which he has continuously maintained in the District. When a person has one home and only one home, his domicile is the place where his home is. *Restatement, Conflict of Laws*, Chapter 2, Section 12, Page 24.

Domicile is defined in 9 *R. C. L.* 538 as follows:

> "The term 'domicile' in its ordinary acceptation means a place where a person lives or has his home. In a strict legal sense that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is

[2] App. D. C. ..., 113 F. (2d) 25, cert. den. 310 U. S. 631.

> absent, the intention of returning. In a sense domicile is synonymous with home, or residence, or 'the house of usual abode'."

See also:

Texas v. *Florida*, 306 U. S. 398;

Jacobs, Law of Domicile, Section 70, Page 113, and Section 72, Page 120;

Kennan on Residence and Domicile, Section 16, Page 37;

Goodrich on Conflict of Laws, Section 25.

The Board of Tax Appeals found as a fact that the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time (R. 9). The Board's findings were accepted by the Court of Appeals (R. 24) and domicile in the District of Columbia follows as a matter of law.

In *Story, Conflict of Laws*, Section 46, the rule is stated as follows:

> "If a person has actually removed to another place with an intention of remaining there for an indefinite time, and as a place of fixed present domicile, it is deemed to be his place of domicile, notwithstanding he may entertain a floating intention to return at some future period."

The rule announced by Story seems to have been almost universally adopted.

Gilbert v. *David*, 235 U. S. 561;

Mitchell v. *United States*, 21 Wall. 350, 22 L. Ed. 584;

Rosenberg v. *Comm. of Internal Revenue*, 59 App. D. C. 178, 37 F. (2d) 808;

Newman v. *United States Ex Rel. Frizzell*, 43 App. D. C. 53;

Bradstreet v. *Bradstreet*, 18 D. C. Rep. (7 Mackey) 229;

Ringgold v. *Barley*, 5 Md. 186, 59 Am. Dec. 107;
Klutts v. *Jones*, 21 N. Mex. 720, 158 P. 490, L.R.A. 1917A 291;
Felker v. *Henderson*, 102 A. (N. H.) 623, L.R.A. 1918E 512;
Kennan on Residence and Domicile, Section 127, Page 257.

The intention, however, to return to the domicile of nativity, or one acquired, must be fixed, absolute, and unconditional. A mere floating intention to return at some future period or upon the happening of some uncertain event is not sufficient. The intent to return must not depend upon inclination or be controlled by future events.

Sparks v. *Sparks*, 114 Tenn. 666, 88 S. W. 173, 174.
Story, Conflict of Laws, Section 46.

The Court of Appeals, in the *Sweeney* case, apparently affirmed the rule that conjunction of physical presence and *animus manendi* establishes a change of domicile to the new location. However, in the instant case where there was both physical presence and intention to remain in the District, the Court of Appeals held the respondent to be domiciled in Pennsylvania. The evidence clearly shows that at least until the death of his wife in 1935, the respondent had an intention to remain and make his home in the District until and after his retirement from Government service. There is no proof that such intention does not still remain with the respondent except his declaration to the contrary made while he was testifying in his own behalf in this proceeding before the Board of Tax Appeals. Such declarations are, at best, self-serving, and are entitled to little, if any, weight. *Texas* v. *Florida*, *supra*; *Rosenberg* v. *Comm. of Internal Revenue*, *supra*; 19 *C.J.* 440, 9 *R.C.L.* 558. Even assuming that after the death of his wife in 1935, respondent did change his intention to remain in the District after his retirement, such change of intention could not effect a change of domicile in the absence of physical removal to Pennsylvania.

It seems evident that respondent did not intend to retain his domicile in Pennsylvania. The intention required for the

acquisition of a domicile of choice is an intention to make a home in fact, and not an intention to acquire a domicile. *Restatement, Conflict of Laws*, Chapter 2, Section 19, Page 38. See also: *Mitchell* v. *United States, supra; Texas* v. *Florida, supra.* The nature of the intention required for the acquisition of a domicile of choice is clearly pointed out by Mr. Justice Holmes in the case of *Dickinson* v. *Inhabitants of Brookline*, 181 Mass. 195, 63 N.E. 331, as follows:

> "Of course the argument for the plaintiff is that his domicile is presumed to continue until it is proved to have been changed, that it could be changed only by his intent and overt act, and that he expressly denied the intent. The ambiguity is in the last proposition. The plaintiff did not deny that he intended to keep on living as he had lived for the last few years and if the jury saw fit to find, as no doubt they did, that he did intend to do so, then he did intend the facts necessary to constitute a change in domicile, and what he did not intend was simply that those facts should have their inevitable legal consequence."

See also: *Jacobs, Law of Domicile*, Section 148, Pages 213-215.

Respondent also testified that he has paid poll taxes in Pennsylvania and voted regularly there since he became of age. While exercise of the elective franchise is important to be considered, as a general rule it is not conclusive, and when overbalanced by other circumstances, the fact of voting may be of slight importance. 19 *C. J.* 436, 437.

See also:

Gaddie v. *Mann*, 147 F. 955;
Bradstreet v. *Bradstreet, supra;*
In re Sedgwick, 223 F. 655;
In re Trowbridge's Estate, 266 N. Y. 283, 194 N. E. 756;

Dickinson v. *Inhabitants of Brookline, supra;*
Wagner v. *Scurlock*, 166 Md. 284, 170 A. 539, 542;
Kennan on Residence and Domicile, Section 78, Pages 158-161;
Wharton, Conflict of Laws, Section 63.

In considering the question of the domicile of one who has removed from one state to another, the fact that the right of suffrage has been exercised in the former state is entitled to much greater weight than when considering the domicile of one who has removed from a state to the District of Columbia. Ordinarily one wishes to take part in the political activities of the state in which he intends to live and therefore when one continues to vote in the state of his former residence this may create a presumption of a fixed intention to return to that state. But the right of suffrage is denied residents of the District. It is but natural that one who removes from a state to the District with the intention of remaining here permanently should, nevertheless, endeavor to retain his right of suffrage as long as possible. It may be that, under the law of Pennsylvania, a former resident of that state may continue to exercise a right of suffrage there until he has actually voted elsewhere. That question, however, is not before this Court. But, in any event, it is plain that the State of Pennsylvania cannot accord a domicile in that State to a resident of the District of Columbia merely by permitting him to vote in its elections.

Unless the domicile of an individual employed by the Federal Government is to be determined upon principles of law different from those used in determining the domicile of an individual in private employment, it clearly appears that the argument that respondent was domiciled in the District of Columbia on the date in question is supported by substantially all authority, including opinions of this Court. The opinion of the Court of Appeals, however, departs from the well-defined principles for determining domicile in three respects: First, by placing Government employees in a special class and holding that the domicile, for purposes of taxation, of an indi-

vidual so employed is to be determined upon different principles of law than those applicable to the determination of the domicile of other individuals. Second, by holding that a person who voluntarily comes to the District and obtains employment here with the Federal Government is presumed to be domiciled in the state from which he comes and that strong evidence is required to overcome such presumption. Third, by holding that a Government employee maintaining his only home in the District and having an intention to remain and make his home here indefinitely is, nevertheless, domiciled for all purposes in the state where he formerly resided.

II

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment.

The Court of Appeals has held that different rules are to be used in determining the domicile, for purposes of taxation, of an employee of the Federal Government than those used in determining the domicile of an individual in private employment. The Court has not only failed to recognize a distinction between *civil* and *political* status but has held that the latter determines the former. In other words, the Court has said that the personal rights of an individual in Government employment, i.e., the law which determines his majority or minority, his marriage, succession, testacy or intestacy, and the like, depends not upon the place where he lives and has his home but upon the place where he formerly resided and acquired the right to vote. Whether an individual who has abandoned his residence in a state and accepted Federal employment and established residence in the District of Columbia may continue to retain a political status in the state where he formerly resided is a matter to be determined by the laws of such state. The laws of most states allow persons in Government service to continue to vote in the elections of such states. Since an individual has no political status in the Dis-

trict of Columbia it is proper and desirable that he be allowed to retain his citizenship or *political* domicile in the state of his former residence. There is, however, no corresponding reason why an individual residing permanently, or at least indefinitely, in the District of Columbia should have a *civil* status or domicile for all purposes in a state where he may never again reside, and it does not appear that the state laws generally accord such a status or domicile to individuals who have been absent therefrom for long periods in Government service.[3] And the fact that such individuals retain their *political* status and continue to vote in their respective states of former residence is not inconsistent with the fact that they acquire a *civil* status in the District of Columbia where they live, enjoy the benefits and protection of local government, by the laws of which District their personal rights should be determined and in which place they are legally domiciled.[4]

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[3] In *Sparks* v. *Sparks*, 114 Tenn. 666, 88 S. W. 173, one who took his family to Washington and lived there 22 years was held to have lost his citizenship, residence and domicile in Tennessee although he occasionally returned to that state and had voted and paid taxes there and had repeatedly expressed his intention of returning to that state in case he should lose his position.

[4] There is a clear distinction between citizenship, on the one hand, and residence or domicile on the other. *Kennan on Residence and Domicile*, Section 62, Pages 136-137, citing among others the case of *Brown* v. *United States*, 5 C. Cls. 571, 579, wherein the Court stated: "We cannot accept the doctrine that the matter of domicile affects the fact of citizenship nor that a mere foreign residence, of itself, can work a forfeiture of political rights."

"Both residence and domicile have to do with a certain set of relations between a person and a place, while citizenship is based upon one's political status which is quite a different thing." *Kennan on Residence and Domicile*, Section 61, Page 135.

"Allegiance and domicile are entirely distinct things. They may exist apart; they may exist together; but the one does not necessarily involve the other." *Jacobs, Law of Domicile*, Section 144, Pages 208, 209.

The distinction is clearly drawn in *Shaeffer* v. *Gilbert*, 73 Md. 66, 20 A. 434, where it is said:

"But there is, it seems to us, a broad distinction between domicile, in a legal and technical sense, by which one's civil status and the rights of persons and property are determined, and residence required by the Constitution as a qualification for the exercise of political rights. 'Domicile', in a legal sense, has, as we all know, a fixed and definite meaning; and yet the word 'domicile' is nowhere to be found in the Constitution. * * * The framers of the Constitution were dealing with the question of residence for political purposes, which, although analogous in many respects, is not to be understood in the same sense as domicile in law, by which the rights of persons and property are governed."

In imposing the income tax upon individuals domiciled in the District, Congress apparently recognized that domicile in the District for purposes of taxation is independent of the right to vote in one of the states.[5]

The Court of Appeals' ruling does not purport to have application to all persons in the District but is limited to employees of the Federal Government. Apparently, the Court does not intend that its ruling should have application to all employees of the Federal Government, but should be limited to such employees residing in the District of Columbia. There would appear to be no logical argument supporting a special rule regarding employees of the Federal Government which applied to only a limited number of such individuals. Any special

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[5] Mr. Nichols, the chairman of the House conferees on the bill, was absent from the conference and the Conference Report and explanation of the bill was made by Mr. Dirksen, a member of the Fiscal Affairs Subcommittee of the House District Committee and one of the conferees. In the course of such report to the members of the House of Representatives there occurred a discussion of the meaning of the term "domiciled" as used in the bill, wherein Mr. Dirksen stated his own views and those of the conferees as follows (84 Cong. Rec., July 12, 1939, 12528):

Mr. Dirksen: * * * I think one can have a taxable domicile in the District of Columbia and still preserve his voting rights back home.

* * * * * *

Mr. McCormack: I think this is a point that should be cleared up. Suppose a person comes from Boston, and the same thing applies to any other city in the country or any other State like Massachusetts, and his yearly employment is in the District of Columbia. He is living here all the year, but he registers for voting purposes in Massachusetts. He cannot vote here and we all know the reasons why, but he wants to exercise his right of suffrage and if he registers in Massachusetts, does he still have to pay the income tax here?

Mr. Dirksen: That precise question was raised in the course of the conference.

(Here the gavel fell.)

Mr. Nichols: Mr. Speaker, I yield the gentleman 5 additional minutes.

Mr. Dirksen: I will say to the gentleman from Massachusetts that I raised that precise question in the course of the conference. We had it up at considerable length with all the tax advisers to this committee, as well as the conference committee, and we were of the opinion you could be taxed here, and yet you can vote back home because you have a taxable domicile in the District. It does not interfere with your right, if you pay your poll tax in Massachusetts, to vote back there and still pay your income tax here. The situation the gentleman alludes to might very conceivably arise in connection with the case of a family that has lived here for 20 or 30 years. They continue to vote back there; but is there any reason why it should not be held that they have a taxable domicile in the District of Columbia since this is the place where they live?

rule for determining the domicile of Federal employees should apply to all such employees alike. Certainly it is not reasonable that the thousands of Federal employees residing in nearby Virginia and Maryland must have their domiciles determined on a different basis than those Federal employees residing in the District.

There are more than 1,151,000 civil employees of the United States, of which number approximately 159,000 are employed in the District. Many of those employed in the District reside in nearby Maryland and Virginia. The rule laid down by the Court of Appeals necessarily affects all Federal employees who have removed from the jurisdiction of original domicile for the purpose of such employment, and the already perplexing problem of determining domicile is thereby further complicated for a substantial number of these 1,151,000 Federal employees.

There is no rule of law which supports the view that domicile or civil status of an individual employed by the United States is to be determined by special rules not applicable to individuals in private employment. The respondent here, like substantially all Government employees, was under no more compulsion to live in the District than an employee of a corporation or other employer. Such individuals are not under real compulsion such as are soldiers, prisoners, minors and lunatics. Respondent came to the District voluntarily to seek employment and has remained here through preference for more than 26 years and intends to remain here and make the District permanently his home. Although he may elect to retain his citizenship and vote in the State of Pennsylvania, he is, nevertheless, domiciled in the District for purposes of taxation.

III

A person is presumed to be domiciled at the place where he lives.

Where a person lives is taken *prima facie* to be his domicile, and the burden of disproving such domicile is on the person who denies it.

Anderson v. *Watt*, 138 U. S. 694;
Ennis v. *Smith*, 14 How. 400, 423;
Newman v. *United States ex rel. Frizzell, supra;*
Bradstreet v. *Bradstreet, supra;*
Gallagher v. *Gallagher* (Tex. Civ. App.), 214 S. W. 516;
Dodd v. *Dodd* (Tex. Civ. App.), 15 S. W. (2d) 686;
Harrison v. *Harrison*, 117 Md. 607, 84 A. 57;
9 *R. C. L.* 541, 557;
Restatement, Conflict of Laws, Chap. 2, Sec. 12, Page 24;
Story, Conflict of Laws, Sec. 46, Page 50;
Kennan on Residence and Domicile, Section 172, Page 327;
Dicey, Law of Domicile, Page 9.

In the case of *Sweeney* v. *District of Columbia, supra*, the Court of Appeals held that although there was a presumption of continuity of state domiciliation during Federal employment, such presumption could be overcome. In the instant case, the Board of Tax Appeals held that the respondent had an intention to remain and make his home in the District. The Court of Appeals sustained the Board's finding of intention to remain, but, nevertheless, held respondent to be domiciled without the District. The effect of the Court's ruling in the case at bar is that the alleged presumption cannot be overcome; in other words, that the domicile of an individual in Government service in the District of Columbia is to be determined not by the facts but solely by his statements as to the place of his domicile.

CONCLUSION

It is therefore respectfully submitted that this case is one of general importance which should be decided by this Court and that a Writ of Certiorari should be granted and this Court should review the decision of the United States Court of Ap-

peals for the District of Columbia and finally reverse said decision.

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